

**FIRST AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
THE CITY OF SALINAS AND SERCO INC.**

This Agreement for Professional Services (the "Agreement") is made and entered into on the date fully executed below, by and between the **City of Salinas**, a California charter city and municipal corporation (hereinafter "City"), and **Serco Inc.**, a New Jersey corporation, (hereinafter "Serco"), collectively the "parties."

**RECITALS**

**WHEREAS**, Serco represents that it is specially trained, experienced, and competent to perform the parking enforcement services required by this Agreement; and

**WHEREAS**, Serco is willing to render such services, as hereinafter defined, on the following terms and conditions.

**NOW, THEREFORE**, City and Serco agree as follows:

**TERMS**

1. **Scope of Service.** The project contemplated and the scope of Serco's parking enforcement services are described in **Exhibit A** (Scope of Work), attached hereto and incorporated herein by reference.
2. **Term; Completion Schedule.** This Agreement shall commence on October 3, 2016, and shall terminate on October 30, 2018, unless extended in writing by either party upon thirty (30) days written notice. This Agreement may be extended only upon mutual written consent of the parties, and may be terminated only pursuant to the terms of Section 17 of this Agreement. Serco shall fully comply with all timelines for performance of its parking enforcement services as set forth in **Exhibit B** (Implementation Schedule).
3. **Compensation.** City hereby agrees to pay Serco for services rendered the City pursuant to this Agreement on a time and materials basis according to the hourly rates of compensation set forth in **Exhibit C** (Cost Proposal – Base Project), not to exceed \$269,359.
4. **Billing.** Serco shall submit to City an itemized invoice, prepared in a form satisfactory to City, describing its services and costs for the period covered by the invoice. Except as specifically authorized by City, Serco shall not bill City for duplicate services performed by more than one person. Serco's bills shall include the following information to which such services cost or pertain:
  - a. A brief description of services performed;
  - b. The date the services were performed;
  - c. The number of hours spent and by whom;
  - d. A brief description of any costs incurred; and
  - e. Serco's signature.

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement.

City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Serco submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, City shall not be obligated to process any payment to Serco until thirty (30) days after a correct and complying invoice has been submitted by Serco. The City shall process any undisputed portion immediately.

**5. Additional Copies.** If City requires additional copies of reports, or any other material which Serco is required to furnish as part of the services under this Agreement, Serco shall provide such additional copies as are requested, and City shall compensate Serco for the actual costs related to the production of such copies by Serco.

**6. Responsibility of Serco.**

a. By executing this Agreement, Serco agrees that the services to be provided and work to be performed under this Agreement shall be performed in a fully competent manner. By executing this Agreement, Serco further agrees and represents to City that Serco possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Agreement and that City relies upon the professional skills of Serco to do and perform Serco's work. Serco further agrees and represents that Serco shall follow the current, generally accepted practices in this area to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the projects for which the services are rendered under this Agreement.

b. Serco shall assign a single Project Director to have overall responsibility for the execution of this Agreement for Serco. **Muhammad Mansoor, Regional Manager**, is hereby designated as the Project Director for Serco. Any changes in the Project Director designee shall be subject to the prior written acceptance and approval of the City Manager.

**7. Responsibility of City.** To the extent appropriate to the projects to be completed by Serco pursuant to this Agreement, City shall:

a. Assist Serco by placing at its disposal all available information pertinent to the projects, including, but not limited to, previous reports and any other data relative to the projects. Nothing contained herein shall obligate City to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of City.

b. Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Serco, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of Serco.

c. **Gary Petersen, Public Works Director**, shall act as City's representative with respect to the work to be performed under this Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to Serco's services. City may unilaterally change its representative upon notice to Serco.

d. Give prompt written notice to Serco whenever City observes or otherwise becomes aware of any defect in a project.

**8. Acceptance of Work Not a Release.** Acceptance by the City of the work to be performed under this Agreement does not operate as a release of Serco from professional responsibility for the work performed.

**9. Indemnification and Hold Harmless.** Serco shall indemnify, defend, and hold City and its officers, employees, and agents harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to any property, or violation of any relevant federal, state or municipal law or ordinance, or other cause in connection with the negligent, reckless or intentional acts or omission of Serco, its employees, subcontractors or agents, or on account of the performance or character of the work, except for any such claim arising from the negligence or willful misconduct of the City, its officers, employees or agents. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Serco from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Serco shall reimburse the City for all costs and expenses including, but not limited to, court costs incurred by the City in enforcing the provisions of this section.

**10. Insurance.**

a. Serco shall, throughout the duration of this Agreement, maintain comprehensive general liability and property insurance covering all operations of Serco, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile insurance.

b. Serco shall maintain the following limits:

**General Liability** - Serco shall at all times during the term of this Agreement maintain in effect a policy or policies having an A.M Best rating of A-Class VIII or better for bodily injury liability, personal injury, advertising injury and property damage, including product liability insurance with limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000) in the general aggregate and products/completed operations aggregate insuring against any and all liability of the insured with respect to premises and products/completed operations. Liability coverage shall also include coverage for underground work and/or construction performed (if applicable). The coverage afforded to the additional insureds under Serco's policy shall be primary insurance and non-contributory. If coverage is on a claims-made basis, Serco shall maintain "tail coverage" no less than ten (10) years after the expiration date of the policy or policies. Any policy or policies carrying a deductible of more than \$25,000.00 may be subject to review by the City of Serco's financials.

**Umbrella or Excess** - Serco shall provide limits on the Declarations Page but not less than Two Million and 00/100 Dollars (\$2,000,000) per occurrence and Two Million and 00/100 (\$2,000,000) in the aggregate on a follow - form basis having an A.M Best rating of A-Class VIII or better.

**Auto Liability** - Serco shall provide limits on the Declarations Page but not less than One Million and 00/100 (\$1,000,000.00) combined single limit for bodily injury and property damage having an A.M Best rating of A - Class VIII or better. Automobile Liability Symbol 1 (any auto), if Serco owns automobiles. An entity without autos shall have "Non-owned and Hired" coverage (Auto Symbols 8 & 9). The City and its elected and appointed officers, boards, commissions, agents and employees shall be named as Additional Insureds.

**Workers' Compensation** – Serco shall provide Workers' Compensation Insurance sufficient to meet its statutory obligation and to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death) as required by the State of California and Employer's Liability Insurance for One Million and 00/100 Dollars (\$1,000,000). Waiver of Subrogation for Workers' Compensation in favor of the City of Salinas is required.

**Professional Liability** - Serco shall provide limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000) per claim and One Million and 00/100 Dollars (\$1,000,000) in the aggregate having an A.M Best rating of A-Class VIII or better.

c. All insurance companies with the exception of "Worker's Compensation" and "professional errors and omissions" affording coverage to the Serco shall be required to add the City of Salinas, its officers, and agents as additional "insured" by endorsement under the insurance policy and shall stipulate that this insurance policy will operate as primary insured for the work performed under this Agreement and that no other insurance affected by the City or other named insured will be called upon to contribute to a loss covered thereunder. The policy shall contain no special limitations on the scope of protection afforded to City, its officers, employees or agents.

d. All insurance companies affording coverage to Serco shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California.

e. All insurance companies affording coverage shall provide thirty (30) days written notice by certified mail to the City of Salinas should the policy be canceled or reduced in coverage before the expiration date. For the purpose of this notice requirement, any material change prior to expiration shall be considered cancellation.

f. Serco shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City's City Attorney, concurrently with the submittal of this Agreement. A statement on the insurance certificate which states, in effect, that the insurance company "will endeavor" to notify the certificate holder, "but failure to mail such notice shall impose no obligation or liability of any kind upon Serco, its agents or representatives" does not satisfy the requirements of this subsection. Serco shall ensure that the authorized representative of the insurance company strikes the above quoted language, or language with similar effect, from the certificate.

g. Serco shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by Serco to provide such a substitution and extend the policy expiration date shall be considered default by Serco. In the event Serco is unable to provide a substitute certificate

of insurance within the time prescribed in this subsection, Serco shall provide written confirmation of renewal, in a form satisfactory to the City, to act as proof of insurance only until such time as a certificate of insurance has been received by the City.

h. Maintenance of insurance by Serco as specified in this Agreement shall in no way be interpreted as relieving Serco of any responsibility whatever and Serco may carry, at its own expense, such additional insurance as it deems necessary.

**11. Access to Records.** Serco shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the City under this Agreement on file for at least three (3) years following the date of final payment to Serco by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during Serco's usual and customary business hours. Serco shall provide proper facilities to City's representative(s) for such access and inspection.

**12. Assignment.** It is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Serco. This Agreement shall not be assigned by Serco without express written approval of the City, and such consent shall not be unreasonably conditioned, delayed or withheld.

**13. Changes to Scope of Work.** City may at any time, and upon a minimum of ten (10) days written notice, seek to modify the scope of services to be provided for any project to be completed under this Agreement. Serco shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Rate of Compensation shall be based upon Serco's schedule of hourly rates shown in **Exhibit A** of this Agreement, and is subject to change based upon impacts to time and compensation due to changes to scope of work and for changes in applicable federal, state, or local regulatory requirements. In the event a change in such regulatory requirements affects Serco's cost of performing its obligations under the Agreement, Serco may submit a request to the City for an adjustment to **Exhibit C**, which may be approved by the City upon receipt of sufficient justification. Upon agreement between City and Serco as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Serco shall constitute Serco's notice to proceed with the changed scope.

**14. Notice to Proceed; Progress; Completion.** Upon execution of this Agreement by both parties, City shall give Serco written notice to proceed with this work. Such notice may authorize Serco to render all of the services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Serco shall diligently proceed with the work authorized and complete it within the agreed time period specified in said notice.

**15. Ownership of Documents.** Title to all final documents, including drawings, specifications, data, reports, summaries, correspondence, photographs, computer software (if purchased on the City's behalf), video and audio tapes, software output, and any other materials with respect to work performed under this Agreement shall vest with City at such time as City has compensated Serco, as

provided herein, for the services rendered by Serco in connection with which they were prepared. City agrees to hold harmless and indemnify Serco against all damages, claims, lawsuits, and losses of any kind including defense costs arising out of any use of said documents, drawings, and/or specifications on any other project without written authorization of Serco.

**16. Subcontractors.** Serco shall be entitled, to the extent determined appropriate by Serco, to subcontract any portion of the work to be performed under this Agreement. Serco shall be responsible to the City for the actions of persons and firms performing subcontract work. The subcontracting of work by Serco shall not relieve Serco, in any manner, of the obligations and requirements imposed upon Serco by this Agreement.

**17. Termination.**

a. City shall have the authority to terminate this Agreement, upon written notice to Serco, as follows:

- 1) If in the City's opinion the conduct of Serco is such that the interest of the City may be impaired or prejudiced, or
- 2) For convenience of the City.

b. Upon termination, Serco shall be entitled to payment of such amount as fairly compensates Serco for all work satisfactorily performed up to the date of termination based upon the hourly rates of compensation shown in **Exhibit A**, except that:

In the event of termination by the City for Serco's default, City shall deduct from the amount due Serco the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due Serco are made to compensate City for its actual additional costs incurred in securing satisfactory performance of the terms of this Agreement, including but not limited to, costs of engaging another contractor for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to Serco hereunder, Serco shall pay City the full amount of such expense.

c. In the event that this Agreement is terminated by City for convenience, Serco shall:

- 1) Upon receipt of written notice of such termination promptly cease all services on this project, unless otherwise directed by City to continue performance of specific parts of the Scope of Work; and
- 2) Deliver to City all documents, data, reports, summaries, correspondence, photographs, computer software output, video and audio tapes, and any other materials provided to Serco or prepared by or for Serco or the City in connection with this Agreement. Such material is to be delivered to City in completed form; however, notwithstanding the provisions of Section 15 herein, City may condition payment for services rendered to the date of termination upon Serco's delivery to the City of such material. If the termination is for the convenience of the City, Serco shall be paid compensation for services performed to

the date of termination and any cost associated with the transition of services to the City or City's designee.

d. In the event that this Agreement is terminated by City for any reason, City is hereby expressly permitted to assume the projects and complete them by any means, including, but not limited to, an agreement with another party.

e. The rights and remedies of the City and Serco provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement.

**18. Audit and Examination of Accounts.**

a. Serco shall keep and will cause any assignee or subcontractor under this Agreement to keep accurate books of record in account, in accordance with sound accounting principles, which records pertain to services to be performed under this Agreement.

b. Any audit conducted of books and records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing.

c. Serco hereby agrees to disclose and make available any and all information, reports or books of records or accounts pertaining to this Agreement to City and any City of the County of Monterey or state or federal government which provides support funding for this project.

d. Serco hereby agrees to include the requirements of subsection b, above, in any and all contracts with assignees or consultants under this Agreement.

e. All records provided for in this section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than three (3) years after full completion of services hereunder, except that any and all such records which pertain to actual disputes, litigation, appeals or claims shall be maintained and made available for a period of not less than three (3) years after final resolution of such disputes, litigation, appeals or claims.

**19. Compliance with Laws, Rules, and Regulations.** Services performed by Serco pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

**20. Exhibits Incorporated.** All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement shall control the respective duties and liabilities of the parties.

**21. Independent Contractor.** It is expressly understood and agreed by both parties that Serco, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the City. Serco expressly warrants not to represent, at any time or in any manner, that any employee or agent of Serco is an employee or servant of the City.

**22. Integration and Agreement.** This Agreement represents the entire understanding of City and Serco as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

**23. Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey.

**24. Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

**25. Notices.**

a. Written notices to the City hereunder shall, until further notice by City, be addressed to:

Gary Petersen, Public Works Director  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

With a copy to:

Christopher A. Callihan, City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

b. Written notices to Serco shall, until further notice by Serco, be addressed to:

Chan Phuong, Contracts Representative  
Serco NA Contracts Department  
Serco Inc.  
1818 Library Street, Suite 1000  
Reston, VA 20190

c. The execution of any such notices by the City Manager or Public Works Director of the City shall be effective as to Serco as if it were by resolution or order of the City Council, and Serco shall not question the authority of the City Manager or Public Works Director to execute any such notice.

d. All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.



26. **Nondiscrimination.** During the performance of this Agreement, Serco shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, marital/familial status, sexual orientation, gender identity/expression, age (40 years and over), military/veteran status, disability, or any other classification protected by law. Serco shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, creed, sex, national origin, marital/familial status, sexual orientation, gender identity/expression, age (40 years and over), military/veteran status, disability, or any other classification protected by law.
27. **Conflict of Interest.** Serco warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. Serco further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Serco shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Serco further warrants its compliance with the Political Reform Act (Government Code sections 81000 et seq.) and Salinas City Code Chapter 2A that apply to Serco as the result of Serco's performance of the work or services pursuant to the terms of this Agreement.
28. **Headings.** The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.
29. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of the document.
30. **Attorney Fees.** In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorney fees in addition to such costs as may be allowed by the Court. City's attorney fees, if awarded, shall be calculated at the market rate.
31. **Non-Exclusive Agreement.** This Agreement is non-exclusive and both City and Serco expressly reserve the right to contract with other entities for the same or similar services.
32. **Rights and Obligations Under Agreement.** By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.
33. **Licenses.** If a license of any kind, which term is intended to include evidence of registration, is required of Serco, its representatives, agents or subcontractors by federal, state or local law, Serco warrants that such license has been obtained, is valid and is in good standing, and that any applicable bond is posted in accordance with applicable laws and regulations.
34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

**35. Legal Representation.** Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

**36. Joint Representation.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

**37. Warranty of Authority.** Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

**38. No Waiver of Rights.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. A waiver by the City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date fully executed below.

**CITY OF SALINAS**

\_\_\_\_\_  
Ray E. Corpuz, Jr., City Manager

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher A. Callihan, City Attorney

\_\_\_\_\_  
Date

**SERCO INC.**

\_\_\_\_\_  
By: Chan Phuong  
Its: Contracts Representative

\_\_\_\_\_  
Date